

567—150.7(455B) Proceedings. Except as otherwise provided in this rule, the contested case procedures of 561—Chapter 7 and Iowa Code chapter 17A shall apply.

150.7(1) Presiding officer. The commission, including temporary members, shall preside over the proceedings and make the final determination. An administrative law judge for the department of inspections and appeals may assist the commission to ensure that the provisions of Iowa Code chapter 17A, 561—Chapter 7 and this rule are met, to provide advice on legal technicalities which may arise during the proceedings, and to prepare orders and perform other ministerial functions. Commission members who actually preside over matters or actually review the record may vote on determinations. A majority of the entire commission must vote affirmatively to grant a site license. (NOTE: In a given case, the commission may consist of from 9 to 17 members, depending on the makeup of the environmental protection commission and the appointment of temporary members.)

150.7(2) Procedural schedule. Within 30 days after the application is accepted, the commission shall establish a procedural schedule for consideration of the application. The schedule shall be established to the extent possible by agreement of the parties at a prehearing conference to be held two weeks after acceptance of the application, or at such other time as agreed upon. Notice of the procedural schedule and hearing shall be promptly served personally or by certified mail on the parties, interested agencies and persons, and all owners of record of real property located within one mile from the boundaries of the proposed site. The procedural schedule shall consist of:

a. A date for completion of discovery, if any is determined necessary. Discovery shall not be used to delay the proceedings and in view of the time constraints of Iowa Code section 455B.446(1), the time periods allowed in the rules of civil procedure may be shortened. The parties shall cooperate through informal means of discovery to the extent reasonable.

b. A date by which the direct written testimony of parties shall be filed.

c. A date by which the rebuttal testimony of parties shall be filed.

d. A date or dates for hearing, which shall be no later than 120 days after the application is accepted and no sooner than 20 days after public notice of hearing in accordance with 150.7(3). The time and place of hearing or hearings shall be included.

e. A date for posthearing legal briefs, three weeks after the last day of hearing, and a date for rebuttal briefs two weeks after the date for initial briefs. The filing of briefs may be waived at the close of the hearing.

150.7(3) Public notice of hearing. In addition to the specific notice required by 150.7(2), notice of hearing shall be published in accordance with Iowa Code section 455B.446(4).

150.7(4) Written testimony. In order to clarify issues, simplify the proceedings and avoid surprise, all parties shall file the written testimony of any witnesses on their behalf prior to the hearing, as specified in the procedural schedule. Testimony shall be typed on plain white, 8½- x 11-inch paper, double spaced, in question and answer form, with each typed line being numbered at the left margin and each page numbered at the center bottom margin. The first page shall begin with the caption of the case and be appropriately labeled (e.g., “Direct Testimony of _____, for _____”). Parties may file written rebuttal testimony in the same manner in accordance with the procedural schedule. Such filing is mandatory if significant comment to direct testimony is to be made a part of the record.

150.7(5) Conduct of hearing.

a. *Place.* The hearing shall be conducted in the county in which the proposed site is located, unless the commission determines that another location would be more reasonable considering the convenience of the commission members, the parties, and the potentially affected public.

b. *Submission of evidence.* The previously filed written testimony shall be placed in evidence by affirmation of and summarization by the witness at the hearing, in the following order, unless the parties and presiding commission agree that a different order would be more practicable.

- (1) Direct testimony of applicant’s witnesses.
- (2) Direct testimony of regulatory agency witnesses.
- (3) Direct testimony of intervenors’ witnesses.
- (4) Rebuttal testimony of applicant’s witnesses.
- (5) Rebuttal testimony of regulatory agency witnesses.

(6) Rebuttal testimony of intervenors' witnesses.

The witness shall explain any changes to the written testimony that should be made, and shall be subject to cross-examination at the hearing.

c. Comments. At the close of presentation of evidence and cross-examination of all parties' witnesses, any person may present oral or written comments at the hearing. The parties may respond to such comments.

d. Argument. No oral argument will be allowed by parties unless the party waives the filing of a written brief.